

MEMORANDUM

TO: Mayor Colvin, Nathan Crouch, Courtney McNair

FROM: R. Justin Eichmann

DATE: September 2, 2021

RE: Appeal of a Development Plat

In order to follow up on my opinion about the potential for appeal of a denial or approval of a Large Scale Development, which I expressed a couple of weeks ago and which we discussed in part at the Planning Commission work session, I thought it would be helpful to follow-up that discussion with a memo.

Following the establishment of a planning commission and the adoption of master street plan for the city, Ark. Code Ann. § 14-56-417 allows a city to establish regulations controlling the development of land. Such regulations have been adopted by Tontitown and are codified in Chapter 152 Development and Subdivision Regulations, of the Tontitown Municipal Code. These regulations set forth the minimum requirements for the development of land. For Tontitown, these regulations allow for a property owner to apply for a preliminary plat, final plat, incidental subdivision and a large scale development relating to properly zoned real property.

As we covered in depth in the work session last week, the provisions of Ark. Code Ann. § 14-56-417 and in binding Arkansas case law such as *Richardson v. Little Rock Planning Commission*, 295 Ark. 189 (1988) is clear that a city's subdivision regulations specify the *minimum standards* to which a plat must conform, and it is arbitrary as a matter of law to deny approval of a plat that meets those standards. Further, as we discussed, a planning commission may not disregard the regulations set forth in a subdivision ordinance and substitute its own discretion. Once compliance with the subdivision regulations has been met by an applicant for a plat approval, there is no discretionary power to disapprove of the plat. The Court in *Richardson* explained that the "planning commission is not a legislative body but functions in an administrative capacity and derives its authority from the legislature." *Richardson*, 295 Ark. at 191 (citing *City of Paragould v. Leath*, 266 Ark. 390, 583 S.W.2d 76 (1979); and *Arkansas Power and Light Co. v. City of Little Rock*, 243 Ark. 290, 420 S.W.2d 85 (1967)). Because it is an administrative body that operates specifically through statute, it is important that the enabling statutes for the planning processes are carefully consulted.

As I expressed several weeks ago, it is my opinion that a development plat, which is provided for under Ark. Code Ann. § 14-56-417 and as reflected in Chapter 152 Development and Subdivision Regulations, of the Tontitown Municipal Code, may not be appealed to the City Council. Rather, the Planning Commission is the final administrative authority for a plat. Ark. Code Ann. § 14-56-417(b)(3)(B) states:

No deed or other instrument of transfer shall be accepted by the county recorder for record unless the deed or other instrument of transfer is to a lot or parcel platted and on filed or accompanied with a **plat approved by the commission**.

Also, Ark. Code Ann. § 14-56-417(b)(4) states:

The regulations shall establish the procedure to be followed to secure plat **approval by the commission**.

These provisions are clear and unequivocal that a plat must be approved by a planning commission, and not a city council.

A matter that has made this issue confusing is that the Tontitown Municipal Code contains an appeal provision in the subdivision regulations at Chapter 152.102 Appeals. This appeal section was adopted in 2013 and is problematic for several reasons, not the least of which is that it does not makes sense and it violates state law. It states – “Any decision of (sic) Planning Commission may be appealed pursuant (sic) to the City Council.” It appears that there is language missing from this provision, and there is no limitation to a time-period for the appeal or who (such as an aggrieved party) can appeal. But as set forth above, a preliminary plat, final plat, incidental subdivision and a large scale development are administrative actions that require approval from the planning commission. State law has precedence over local ordinances or regulations, and it is my opinion that while other possible actions of the Planning Commission, such as the approval or denial of a subdivision waiver or a CUP, could potentially be appealed to City Council, the approval or denial of a plat cannot be appealed. It is my recommendation that we amend this appeal section to conform it to state law.

An aggrieved party to the approval or denial of a plat cannot appeal this decision to the City Council but must instead file an action in Circuit Court pursuant to Ark. Code. Ann. § 14-56-425(a)(1), which states:

Appeals from the **final administrative or quasi-judicial decision** by the municipal body administering this subchapter shall be taken to the circuit court of the appropriate county using the same procedure as for the appeals of the District Court Rules of the Supreme Court.